

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

Josiah Kuenzi  
369 Beech Street  
Pottstown, PA 19464

Plaintiff

V.

EuroSport Cycles, Inc., et al  
275 Lincoln Avenue  
Middlesex, NJ 08846

## Defendants

CIVIL ACTION NO.: 08-3906

## Jury of Twelve (12) Jurors Demanded

**PLAINTIFF’S ANSWER TO COUNTERCLAIM OF DEFENDANT, CAPITAL AUTO  
FINANCE, INC., WITH AFFIRMATIVE DEFENSES**

**COUNTERCLAIMS**  
**COUNT 1 – BREACH OF LOAN AGREEMENT**

57. Plaintiff incorporates his complaint as if fully set forth at length herein.

58. Admitted.

59-60. Denied. The Loan Agreement is a writing and, as such, speaks for itself. The remainder of the allegations set forth in paragraph 59 are conclusions of law to which no response is required.

61. Admitted.

62. Admitted in part; Denied in part. The Transaction History Report is a writing as, as such, speaks for itself. It is admitted that Plaintiff made payments under the loan agreement to Defendant, Capital One Finance, Inc.

63-64. Denied. The allegations set forth in paragraphs 63-64 are conclusions of law to which no response is required.

65-66. Denied. The Transaction History Report is a writing and as such, speaks for itself.

67-69. Denied. The allegations set forth in paragraphs 67-69 are conclusions of law to which no response is required.

**COUNT 2 – UNJUST ENRICHMENT**

70. Plaintiff incorporates paragraphs above as if fully set forth at length herein.

71. Denied.

72. Admitted.

73-75. Denied. The allegations set forth in paragraphs 73-75 are conclusions of law to which no response is required.

**PLAINTIFF'S AFFIRMATIVE DEFENSES TO THE COUNTERCLAIMS OF DEFENDANT**

76. Plaintiff incorporates paragraphs above as if fully set forth at length herein.

77. Defendant's counterclaims fail to state a claim upon which relief may be granted.

78. Defendant's counterclaims are barred in whole or in part by Defendant and/or its agent's failure to mitigate damages.

79. Defendant's counterclaims are barred by the applicable statute of limitations.

80. Defendant's counterclaims are barred by waiver, estoppel, and/or unclean hands.

81. Defendant and/or its agent and/or the remaining Defendants are the proximate cause of any alleged damages set forth in the Defendant's counterclaims.

82. Defendant's claims and damages are precluded in whole or in part by the negligence, or the comparative or contributory negligence of itself.

83. Defendant's claims and damages are precluded in whole or in part by the intervening or superseding negligence of the other Defendants.

84. Plaintiff is entitled to contribution and/or indemnification from Co-Defendants.

85. Plaintiff reserves the right to plead and provide additional special and/or affirmative defenses which become known through discovery.

**WHEREFORE**, Plaintiff requests this Honorable Court enter judgment in his favor and against Defendants, individually, jointly and/or severally, in an amount in excess of seventy-five thousand dollars (\$75,000), plus such other and further relief as this Honorable Court deems necessary and just, and to Order the following relief:

- a. Rescission of the loan, including a declaration that Plaintiff is not liable for any finance charges or other charges imposed by Defendants;
- b. Termination of any security interest in Plaintiff's property which may have been created under the loan;
- c. Return of any money or property given by Plaintiff to anyone, including Defendants, in connection with the transaction;
- d. Statutory damages;
- e. Forfeiture and return of loan proceeds;
- f. Damages, including;
  - i. Actual damages;
  - ii. Treble damages;
  - iii. Attorneys fees and expenses, and costs of suit; and
  - iv. Punitive Damages.

WEISBERG LAW, P.C.

/s/ Matthew B. Weisberg  
Matthew B. Weisberg, Esquire  
Attorney for Plaintiff

